Supreme Court, U. S.
FILED
NOV 23 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-596

GULF OIL CORPORATION,

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MEMORANDUM FOR INTERVENOR PUBLIC SERVICE ELECTRIC AND GAS COMPANY IN OPPOSITION

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1. Petitioner seeks review of the Court of Appeals' Decision (App. A, pp. 1a-58a) affirming the Decision of the Federal Power Commission (App. D, pp. 67a-94a). The decision below is not in conflict with any decision of this Court or any other Court of Appeals.

2. Public Service Electric and Gas Company (Public Service) is a public utility operating company engaged among other things in the purchase, manufacture and dis-

tribution of gas. It purchases natural gas from three interstate pipeline companies and serves gas to over 1,290,000 customers in an area having a population in excess of 4,900,000 persons and which extends from the Hudson River opposite New York City to the Delaware River at Trenton and thence to Camden, New Jersey. Texas Eastern Transmission Corporation (Texas Eastern) is a major supplier of Public Service and Petitioner Gulf Oil Corporation (Gulf) provides Texas Eastern a large portion of its supply under the contract and certificate of public convenience and necessity under review herein.

3. Petitioner seeks to have this Court review its daily delivery obligations under its contract and certificate claiming that such obligations are matters of general importance (Gulf Br. p. 27). In the particular case under review herein, Public Service submits that the delivery obligations are unique in the gas industry and are not matters of general importance warranting review by this Court. Unlike the normal gas purchase contract, Gulf gave its corporate warranty to deliver specified volumes of gas to Texas Eastern. In the normal gas purchase agreement, the Seller dedicates the reserves in a particular field to the contract, whatever those reserves may ultimately turn out to be. In this unique type of contract, the Court of Appeals used its reasoned judgment to analyze all of the terms of the contract and properly affirmed the Federal Power Commission's (FPC) rulings regarding Gulf's delivery obligations. (App. A, pp. 8a-11a).

4. Petitioner has gone to great lengths to have the Courts narrowly interpret its delivery obligations despite the fact that under any possible interpretation of the contract obligation Gulf has been in default. Even assuming the daily delivery obligation to be 500,000 MCF as Gulf claims, the record indicates that Gulf was in de-

fault of this obligation from 1974 through 1976. While Gulf contends that it does not have an obligation to deliver the maximum quantity of 625,000 MCF every day, the *record* indicates that Gulf has not made deliveries at this level on any day for at least several years. Therefore, the question which Gulf seeks to have this Court review is not whether or not it has been in default but only the degree to which it has been in default. This narrow issue of contract interpretation has already been thoroughly examined by the FPC and by the Court of Appeals which affirmed the FPC's rulings.

It is therefore respectfully submitted that the petition for a writ of certiorari be denied.

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November 23, 1977